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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,311	12/22/2005	Michael Popovsky	SP02.PAU.01.US	3777

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Myers Andras Sherman LLP
19900 MacArthur Blvd.
Suite 1150
Irvine, CA 92612

EXAMINER	
CHIN, RANDALL E	

ART UNIT	PAPER NUMBER
3723	

MAIL DATE	DELIVERY MODE
12/08/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/562,311	POPOVSKY ET AL.	
	Examiner	Art Unit	
	Randall Chin	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 September 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-91* is/are pending in the application.

4a) Of the above claim(s) *40-53 and 55-91* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-39 and 54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *022406;101906;030508;030708;082708*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 40-53 and 55-91 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 17 September 2009.

2. Applicant's election of Group I, claims 1-39 and 54, in the reply filed on 17 September 2009 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-39 and 54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-13, 59-62, 65 and 66 of copending Application No. 10/696,069. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-39 and 54 are generic to and fully encompasses claims 1, 3-13, 59-62, 65 and 66 of copending Application No. 10/696,069. Claims 1-39 and 54 are anticipated by claims 1, 3-13, 59-62, 65 and 66 of copending Application No. 10/696,069 because instant claim 1, for example, is broader in scope than claim 1 of copending Application No. 10/696,069 since instant claim 1 does not require the solid cleansing agent to be pourable soap impregnated into the substrate nor does it require a pourable soap containing glycerine.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 2, 22, 29 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor 5,955,417 (hereinafter Taylor).

As for claim 1, the patent to Taylor teaches a cleansing pad 10 comprising a web of fibers (col. 3, lines 43-47) forming a substrate 12 having a "cellular" structure (since it includes voids as recited in col. 2, lines 44-46) and a solid cleansing agent 14 distributed substantially throughout said substrate in a quantity sufficient for multiple uses (col. 4, lines 1-2) of the pad in conjunction with a solvent that dissolves the solid cleansing agent for cleansing purposes. The solid cleansing agent is deemed to also be a "pourable cleansing agent" as such is in "pourable" form even before it hardens as recited in col. 7, lines 52-62). Furthermore, when the hardened soap contacts water, it will create suds and would be deemed a "pourable cleansing agent". It is the claims that define the claimed invention, and it is the claims, not specifications that are found to be unpatentable.

As for claim 2, the cleansing agent comprises a pourable soap (col. 4, lines 1-2) that is in solid form at a first temperature range, and in pourable molrten form at a second temperature range, and upon cooling to said first temperature range re-solidifies to its original composition (col. 7, lines 52-62).

As for claim 22, the substrate comprises synthetic materials.

As for claim 29, the substrate comprises non-woven materials (col. 3, lines 43-44).

As for claim 54, Taylor discloses a cleansing pad (Fig. 1) and claim 54 is rejected similarly to claim 1 above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 3-21, 23-28, 30-32, 35, 36, 38, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.

As for claims 3, 6, 7, 8, 9, 10, 11, 12 and 39, such sodium soaps and detergents are well known and one skilled in the art would find it obvious to select any of the claimed types for appropriate and desired usage (col. 5, lines 27-61).

As for claims 4, 5, 8, 10, 11 and 12, the claimed particular percentages would be well within the level of ordinary skill and could be obtained through a mere optimization process (col. 5, lines 27-61).

As for claims 13, 14, 15, 16, 17, 18, 19, 20 and 21, such claimed elements for the cleansing agent are also deemed well known and one skilled in the art would find it obvious to select any of the claimed types for appropriate and desired usage.

As for claims 13, 14, 15, 16, 17, 18, 19, 20 and 21 the claimed particular percentages would be well within the level of ordinary skill and could be obtained through a mere optimization process.

As for claim 23, to have provided naturally occurring materials would be obvious to one skilled in the art as such devices typically incorporate one of synthetic or natural materials. Such selection is merely up to one skilled in the cleansing art.

As for claims 24, 25 and 28, whether the substrate is reticulated, non-reticulated or woven, such arrangements are well known and within the level of ordinary skill and such arrangements merely depend on the final desired strength and/or durability of the substrate.

As for claims 26, 27, 30, 35, 36 and 38, such claimed elements for the substrate are also deemed well known and one skilled in the art would find it obvious to select any of the claimed types for appropriate and desired usage as well as for aesthetics.

As for claims 31 and 32, the claimed weight ratios are also within the level of ordinary skill and merely depends on the desired final product. Taylor is clearly concerned with the amount of cleansing agent relative the substrate and through optimization, one skilled in the art could find the most suitable weight ratio (col. 3, line 61-col.4, line 5).

9. Claims 33, 34 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Reuven 5,960,506 (hereinafter Reuven).

Taylor teaches all of the recited subject matter as set forth previously with the exception of the device having fragrances, skin moisturizers, or antimicrobials/antiseptics. Reuven teaches a cleansing device having fragrances, skin moisturizers, or antimicrobials/antiseptics (col. 4, lines 1-12). It would have been obvious to one skilled in the art to have provided Taylor's device with fragrances, skin moisturizers, or antimicrobials/antiseptics as suggested by Reuven for the purpose of adding versatility to the cleansing device and for aiding the user in a healthier manner.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to McManus is pertinent to a cleansing device arrangement.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Randall Chin/
Primary Examiner, Art Unit 3723